

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In the Matter of:)	Honorable Barry S. Schermer
)	
Harding Washington Nossner, Jr.,)	Case No. 14-47914
)	
Debtor,)	Chapter 13
)	
Malco Real Estate, Inc.)	
)	
Movant,)	
)	
vs.)	
)	
Harding Washington Nossner, Jr.,)	Mark R. Bahn, Esq.
)	McAvoy & Bahn
and)	330 Water Street
)	Fenton, MO 63026
John V. LaBarge, Jr., Esq., Trustee,)	636-343-9753
)	
Respondents.)	

MOTION FOR RELIEF OF AUTOMATIC STAY

Comes now, Malco Real Estate, Inc. (“Movant”), by its undersigned attorneys, and
for its Motion states:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 1334 and 157 and 11 U.S.C. Section 362.
2. Movant is a corporation that owns property in the State of Missouri.
3. Debtor filed a Petition in Bankruptcy under Chapter 13 of the United States Bankruptcy Code.

4. At the time of filing the Petition in Bankruptcy, Debtor was the lessee of certain real property known and numbered as 8001, 8003-8005 Gravois Road, St. Louis, MO 63123 (the "Real Property").

5. Movant is the owner and Lessor of the above property and Debtor/Lessee has a balance due as of the filing date of October 8, 2014, in the amount of \$61,118.00 in back rent and taxes due. A copy of the first page of the Lease is attached hereto as Exhibit "A" and by this reference made a part hereof.

6. The Real Property is an asset of this estate.

7. The Debtor has defaulted on the terms of the lease.

8. Since the filing date, Movant has been stayed from any act to obtain possession of the Real Property. Movant has no assurance the Real Property is adequately insured and maintained and the Real property may be depreciating in value.

9. Movant seeks an order of this Court modifying the automatic stay to permit Movant to proceed with possession litigation to gain possession of the Real Property but not to obtain any money judgment or collect any money damages from the Debtor. A hearing on the litigation, Cause No. 14-SLCC-02653, was set in Division 9, St. Louis County Circuit Court on October 9, 2014 at 1:30 p.m. but was stayed when Debtor filed for Bankruptcy Protection on October 8, 2014.

10. Debtor is incapable of proposing a confirmable Plan that complies with Section 1322(c) and that adequately protects Movant.

11. If Movant is not permitted to proceed its litigation to gain possession of the Real Property, Movant shall suffer continued irreparable injury, loss and damage.

12. Movant has incurred attorney's fees and costs in preparation and filing of this Motion.

13. In the alternative, Movant requests this Court grant Movant adequate protection of its interest.

WHEREFORE, Movant prays:

A. Pursuant to 11 U.S.C. Section 362(d) that this Court enter its order modifying the automatic stay of 11 U.S.C. Section 362(a) to permit Movant and/or its affiliated companies, successors and assigns to proceed in its possession litigation against the Real property and to take such actions as are reasonable and necessary under its Lease and state law to gain possession of the Real Property;

B. No part of the costs of these proceedings be charged against Movant or against the Real Property;

C. If the Court refuses to grant relief from the automatic stay, for an order granting Movant adequate protection of Movant's interest;

D. That the Trustee's interest in the Real Property be abandoned;

E. In the event the Real Property is not surrendered, for payment by the Debtor of Movant's reasonable attorney's fees and costs;

F. That this Order be effective immediately upon entry and not be stayed under Rule 4001;

G. This Order shall be binding and remain in full force and effect irrespective of a conversion of this case to a different Chapter of the Bankruptcy Code; and

H. Movant shall have such other and further relief as is just and proper.

Respectfully submitted,

McAVOY & BAHN, L.C.

By: /s/Mark R. Bahn

Mark R. Bahn MBE: 25791

330 Water Street

Fenton, Missouri 63026

Telephone: (636) 343-9753

Facsimile: (636) 343-8669

markrbahn@aol.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served either through the Court's ECF system or by regular mail, this 28th day of October, 2014.

Sean C. Paul, Esq.
8917 Gravois Road, 2nd Floor
St. Louis, MO 63123

Harding Washington Nossner, Jr.
8003 Gravois
St. Louis, MO 63123

John V. LaBarge, Jr., Esq.
P.O. Box 430908
St. Louis, MO 63143

Office of the U.S. Trustee
111 S. Tenth Street, Room 6353
St. Louis, MO 63102

By: /s/Mark R. Bahn